

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/575,902

Applicant(s)

ROTH, EKKEHARD

Examiner

SAEED M. HUDA

Art Unit

1742

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 10 February 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-13.

Claim(s) withdrawn from consideration: 14-20.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/SAEED M. HUDA/
Examiner, Art Unit 1742

continuation of 11. does NOT place the application in condition for allowance because: the arguments provided for by Applicant are not persuasive.

35 USC § 112

Applicant has amended the claims as suggested by the Examiner in the Office Action dated 11/22/2010, thus the 35 USC § 112 rejection has been rescinded.

Response To Art-Based Rejections

Applicant states that the anticipation rejection based on Sampson does not teach a method for producing a fiber-composite material where a filler consisting of the reinforcement fibers are at least one of ground or cut. The Examiner disagrees. Sampson teaches fibers (long reinforcement fibers) and a matrix ([0002]) where the matrix contains filaments or short fibers (filler) that may be created by chopping (cutting) a sheet of these long fibers ([0002]).

With respect to claim 13, Applicant states that the rejection makes the unsupported assertion that ground fibers are inherently fibers that have been cut. The Examiner disagrees. If a fiber is ground the fiber is sheared or cut, to produce a smaller fiber/particle. Thus, fibers that are ground have been inherently cut.

With respect to claim 2, Applicant states that the rejection admits that Sampson fails to teach ground fibers having a particle size less than 2mm. In the previous rejection, Applicant provided a secondary reference, Inokuchi et al., to teach the claimed subject matter, but Applicant states that one having ordinary skill in the art at the time of the invention would not have combined Sampson and Inokuchi as asserted in the rejection and does not provide any sufficient reasoning for including ground fibers having a particle size of less than 2mm. The Examiner believes that the combination of Sampson and Inokuchi is proper in that both Sampson and Inokuchi are directed to the production of a composite material wherein a filler is used that has fibers in the filler and that since Inokuchi et al. has a known particle size used in a filler material for a composite, this teaching is sufficient to modify Sampson.

Applicant's argument that Sampson specifically discloses in paragraph [0002] that his invention is different from composite that use powders or particles is not sufficient, in and of itself, to teach away from the use of smaller particle sizes in that Sampson does not state what size range he considers a parable or powder to be.

Applicant states that one having ordinary skill in the art at the time of the invention would not have combined Sampson and Inokuchi as asserted. The Examiner disagrees. Both Sampson and Inokuchi are directed to forming a composite where a fibrous filler is used and though, Sampson does not explicitly teach the claimed size found in claim 2, Inokuchi does teach this, thus it is known in the art. The combination of Sampson and Inokuchi is appropriate.

Regarding claims 5-9 and 11-12, Applicant states that the Examiner has not provided proper motivation to show that the combination of references used in these rejections is appropriate. The Examiner disagrees with Applicant in that the Examiner has shown why one having ordinary skill in the art at the time of the invention would want to process the material of Sampson into a film as disclosed by Spaay, namely, a film would allow for easy storage (as a roll) and applying the film to a semi-textiled product will allow the film to be properly supported.